IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 2535 of 2005

1. Prabhakar Ganpat Patil
and others ..Petitioners

vs.

1. Prabhakar Shivram Surve
and others ..Respondents

Shri P.G.Lad for petitioners.

CORAM: A.P.SHAH J.
14th September,2005

P.C.

. I have heard Shri Lad appearing for the petitioners. Perused the judgments of the lower Courts. The petitioners are original defendants. The respondents are original plaintiffs and they had filed the present suit for declaration of their tenancy rights and for permanent injunction. The suit was decreed by the Trial Court and in appeal the decree was confirmed.

2. The father of the respondent Shivram Surve was monthly tenant in respect of Room No.3 admeasuring 404 sq.ft. including the outer verandah. It appears that some time in January, 1973, the erstwhile landlord approached him and requested him to surrender his tenancy and to hand over vacant possession of Room No.3 as they wanted to develop the property. According to the respondents, the landlord had promissed to give a room admeasuring 287 sq.ft. in the newly constructed building in lieu of Room No.3 on the same terms and conditions and accordingly the agreement dated 15th January, 1973 was executed

between the parties. It is the case of the respondents that the signature of the original tenant was obtained on the agreement containing blank spaces and subsequently those blank spaces were filled in order to show that the area intended to be given to the deceased tenant in the new building was only 180 sq.ft. It appears that the deceased tenant, therefore, refused to vacate the room and thereafter the parties again negotiated and a fresh agreement dated 2nd May,1980 was entered into between the parties whereby the landlord agreed to give premises of 280 sq.ft. to the tenant in the new building.

3. The new building was constructed in 1981. According to the tenant, he was allotted room nos. 7 and 13 in the new building in lieu of his original premises. On the other hand, it is the case of the petitioner that only room no.7 was allotted to the tenant and the tenant took forcible possession of room no.13. Thus the only question is whether both the rooms were allotted to the tenant or only Room No.7 was allotted. In the cross examination the petitioner’s witness has categorically admitted that the tenant was put in possession of both room nos. 7 and 13 on 10th May, 1981. The execution of the agreement dated 20th April, 1981 was also accepted. The courts below, on appreciation of material on record have recorded a finding of fact that both the rooms i.e. room nos. 7 and 13 were allotted to the original tenant. I do no see any ground to interfere with this finding of fact in exercise of power under Article 227 of the Constitution. Petition is

dismissed.